IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 33 of 1989

M/s. Aegis Chemical Industries Ltd. ... Applicant.

vs.

The Commissioner of Income Tax ..... Respondent

Mr. Md. Ahir Farooqui i/b. M/s. M.K. Ambalal for Applicant.
Mr. Ashok Kotangale, Sr. Counsel for Respondent.

CORAM: V**. C. DAGA**
AND
A. S. AGUIAR JJ.
Date:July, 26, 2005.

P. C.:

1. By this reference under section 256 (1) of the Income Tax Act , 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this court:

> "Whether on the facts and circumstances of the case and the material on records , the Tribunal was correct in law in holding that the disputes between the majority shareholders and the minority shareholders were in the nature of only a domestic quarrel between them and,

therefore , the expenditure of Rs.1,15,186/- incurred on litigation was not allowable as a revenue deduction in computing the total income of the assessee – company under the Income Tax Act ?"

2. The factual matrix reveals that there was an internal dispute between the minority and majority shareholders. This dispute led to filing three proceedings i.e. Company Petition no. 6 of 1971, Company Petition no. 53 of 1969 and appeal no. 1 of 1970 arising therefrom. The expenses incurred in respect of each proceedings were in the sum of Rs.1,93,494.45, Rs.27,800.00 and Rs.64,750.00, respectively, total amounting to Rs.2,86,044.45; out of which an amount of Rs.31,300.00 were recovered from the shareholders. Out of balance of Rs.2,55,044.45, a sum of Rs.1,39,858.05 were allowed by the Income Tax Officer, as business expenditure; whereas the remaining amount of Rs.1,15,186.40 were disallowed, said to be litigation expenses incurred on internal dispute of the shareholders.

3. One fails to understand as to on what basis this bifurcation was made by the ITO. The dispute right from the initiation till final decision was a dispute with the company. Expenditure incurred thereon would be the expenditure incurred for the entire litigation. One cannot bifurcate litigation in different stages for the purposes of

allowing or disallowing the litigation expenditure.

4. The Tribunal has rightly held that the expenses were incurred to facilitate smooth running of the business by getting rid of minority shareholders as such it was the expenditure incurred out of business expediency.

5. The view taken by the Tribunal is a reasonable and possible view . Considering the finding of facts recorded by the Tribunal, we hold that the expenditure in the sum of Rs. 1,15,186.40 incurred in the litigation was allowable as a revenue deduction in computing the total income of the assessee – Company.

6. In this view of the matter question referred to us for opinion is answered in the negative i.e., in favour of the assessee and against the Revenue.

7. Reference stands disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

-x-